IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

WILLIAM C. GIBSON,
Appellant,
v.
THE UNITED STATES. } No. 195.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

I. STATEMENT OF CASE.

The appellant, William C. Gibson, Rear-Admiral, U. S. Navy, retired, filed his petition in the Court of Claims May 12, 1902, and an amended petition November 3, 1902 (Rec. pp. 1, 2), claiming two items of pay:

1. The retired pay of a major-general in the Army instead of that of a brigadier-general which he has been receiving.

2. The commuted value of a ration at the rate of thirty cents a day while on the active list, attached to a sea-going vessel and doing duty at sea.

The court found the facts as follows (Rec. pp. 3, 4)

I. The claimant, William C. Gibson, was duly appointed a captain in the Navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the Navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
WASHINGTON, *June 30, 1900.*

SIR: On July 23, 1900, you will regard yourself transferred to the Retired List of Officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, i. e., Rear-Admiral, in accordance with the provisions of section 11 of the Naval Personnel Act, approved March 3, 1899.

Respectfully,
JOHN D. LONG,
Secretary.

Captain WILLIAM C. GIBSON, U. S. Navy,
Commanding U. S. S. *Texas.*"

II. Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United States as that of a brigadier-general in the Army.

If paid at the rate fixed by said section 1261 for a major-general in the Army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III. From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. *Texas*, a sea-going vessel in commission. During that period he was, prior to the 18th of February, a commander in receipt of pay at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain, receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any

sea ration or commutation therefor, under Revised Statutes sections 1578 and 1585.

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90) (Rec. pp. 3, 4).

The conclusion of the court was adverse to the claimant on both branches of the case and his petition was dismissed (pp. 12, 13). The claimant thereupon appealed to this court (p. 13).

II. ASSIGNMENT OF ERRORS.

The appellant assigns the following errors in the judgment of the Court of Claims:

1. The court erred in holding that the claimant, as a rear-admiral of the Navy on the retired list, is entitled only to the retired pay of a brigadier-general in the Army, whereas said court should have held that he is entitled to the retired pay of a major-general in the Army, corresponding in rank to a rear-admiral in the Navy.

2. The court erred in holding that the claimant was not entitled to one ration, or commutation therefor, while at sea or attached to a sea-going vessel, whereas said court should have held that by virtue of the provisions of sections 1578 and 1585 of the Revised Statutes, he was entitled to thirty cents a day as the commuted value of a daily ration.

III. BRIEF OF ARGUMENT.

1. Pay as Rear-Admiral, Retired.

Statutes Quoted and Question Stated.

The question on this branch of the case is as to the proper rate of pay of the appellant after his retirement, in pursuance of the provision of section 11 of the Personnel Act, from the rank of captain which he held on the active

list to the rank of rear-admiral which he holds on the retired list.

The statutes are grouped and the issues fairly stated in the opinion of the Court of Claims. We quote from Record, p. 5, correcting errors in the text of the statutes:

"Section 1444, Revised Statutes, is as follows: 'When any officer below the rank of vice-admiral is sixty-two years old, he shall, except in the case provided in the next section, be retired by the President from active service.'

"Section 11 of the Navy Personnel Act is as follows: 'That any officer of the navy with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade.' (30 Stat. L. 1007.)

"Section 13 of the Naval Personnel Act (30 Stat. L. 1007) provides as follows:

"'That after June 30, 1899, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army.'

"The first proviso in section 7 of the Naval Personnel Act (30 Stat L. 1005) is as follows:

"'That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army.'

"It is insisted by claimant that being a rear-admiral on the retired list he ranks with a major-general in the army, and therefore entitled to the same pay.

"The question is therefore presented as to whether a captain in the navy when retired as a rear-admiral, under the provisions of section 1444, Revised Statutes, and section 11 of the Naval Personnel Act, shall receive the pay of a major general or that of a brigadier-general."

In addition to the statutes quoted by the Court of Claims, the following are also material as showing the

relative rank between officers of the Navy and of the Army and the pay of the several grades:

By section 1466 of the Revised Statutes of the United States:

"The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

The Vice-Admiral shall rank with the Lieutenant-General.
Rear-admirals with major-generals.
Commodores with brigadier-generals.
Captains with colonels.
Commanders with lieutenant-colonels.
Lieutenant-commanders with majors.
Lieutenants with captains.
Masters with first-lieutenants.
Ensigns with second-lieutenants."

By section 1261:

"The officers of the Army shall be entitled to the pay herein stated after their respected designations:

The General: thirteen thousand five hundred dollars a year.
Lieutenant-General: eleven thousand dollars a year.
Major-General: seven thousand five hundred dollars a year.
Brigadier-General: five thousand five hundred dollars a year.
Colonel: three thousand five hundred dollars a year."

Pay of Grade of Rear-Admiral Fixed by § 13.

There is no question as to the proper rank of the claimant. The order for his retirement provides (Finding I, p. 3) that it is to be "with the rank and three-fourths of the sea pay of the next higher grade, *i. e.* rear-admiral, in accordance with the provisions of section 11 of the Naval Personnel Act, approved March 3, 1899."

His relative rank as a rear-admiral in the Navy (R. S. §1446) is with a major-general in the Army. The pay of a major-general is, by Revised Statutes, section 1261, seven thousand five hundred dollars ($7,500) a year. The provision of section 13 of the Personnel Act entitles him to the retired pay of that grade, unless there is something in some other provision of law which limits him to some other or different rate of pay. Such provision for a different rate of pay is found by the Court of Claims in the first proviso to section 7 of the act. That proviso is as follows:

"*Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army."

This proviso has been before this court in *Rodgers* v. *United States*, 185 U. S. 83. That was the claim of a rear-admiral of the nine lower numbers on the active list of the Navy for the pay of a major-general in the Army. It was based upon the theory that the provision of section 7 of the Personnel Act for a special rate of pay to the rear-admirals of the nine lower numbers of that grade, was temporary legislation only and was after June 30, 1899, superseded by the permanent general provision of section 13 that the officers of the line of the Navy should receive the pay of officers of corresponding rank in the Army. This court held that the proviso to section 7 allowing to each rear-admiral of the nine lower numbers on the active list the pay of a brigadier-general, constitutes permanent legislation, fixing a special rate for those nine different from the general rule prescribed by section 13. The conclusion of the Court of Claims was quoted and approved as follows (p. 92):

"Section 13 is in general terms, and the language there used does not indicate that it was the intention of the

Congress to abrogate the special provision made in section 7 for the rear-admirals 'embraced in the nine lower numbers of that grade'; and special provision having been made for them it cannot be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made."

That conclusion was reached with hesitation. "It may be conceded that the questions we have been considering are not free from doubt, and much may be said in favor of the view opposed to that we have taken." 185 U. S. 92.

The contention made by the United States in the present case goes far beyond that which was made, and with hesitation sustained, in the *Rodgers* case. It is now claimed that the special provision made in section 7 for the rear-admirals embraced in the nine lower numbers of that grade can be extended to an indefinite number of other rear-admirals not within the description of section 7.

There is no special provision in the Personnel Act for the pay of any other rear-admirals than those embraced in the nine lower numbers of that grade. The others receive the pay of a major-general in the Army solely by force of the general provision of section 13, that officers of the line of the Navy "shall receive the same pay and allowances," "as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

Hence all rear-admirals, other than the nine for whose pay special provision is made by section 7, must look to section 13 for a definition of their rate of pay.

Under section 13 rear-admirals on the active list not embraced in the nine lower numbers of that grade receive the same pay as major-generals in the Army. Equally must all rear-admirals on the retired list look to the provisions of section 13 alone for a determination of their rate of pay.

"Grade" Defined in the Act Itself.

But it is held by the court below, that when Congress provided for the retirement of officers having civil war service and a creditable record "with the rank and three-fourths the sea pay of the next higher grade," it meant as to captains that they should have the rank of rear-admirals, but that the pay should be only that of the nine lower numbers. This view makes it necessary to give a different meaning to the word "grade" in section 11 from that which it bears in section 7. Section 7 treats rear-admirals as of one grade. Its language is "that each rear-admiral embraced in the nine lower numbers of that grade," etc. The grade here referred to is that of rear-admiral.

The provision of section 11 is that the officers therein referred to shall "be retired with the rank and three-fourths the sea pay of the next higher grade." A reasonable construction must assign the same meaning to the word "grade" in this section as that which it bears in section 7. That meaning is that when the next higher grade is that of rear-admiral, the officer shall have the rank of rear-admiral and he shall also have three-fourths the sea pay fixed by general provisions of law for that grade.

The theory of the United States that there are two grades of rear-admirals can be sustained only by assigning to the word "grade" a different meaning in section 11 from that which it bears in section 7, the very section relied upon as creating the two grades. When section 7 uses the term "grade," it is to designate the "grade" of rear-admiral, "the grade of ensign," "the grade of lieutenant (junior grade)," etc. The nine lower rear-admirals are, by section 7, only an excepted class within a grade. The word "grade" is used in section 11 to denote a grade

in the same sense as in section 7, and not this excepted class established for a special purpose foreign to that of section 11.

Same Word Used Twice in a Statute.

A construction which assigns to the same word different meanings in different parts of the same statute is at war with well-settled principles of statutory interpretation. The contrary has been repeatedly laid down. The same word or expression used several times in several statutes dealing with the same subject means the same thing wherever used. The case is much stronger where it is used several times in the same statute.

Chief Justice Marshall, in *Alexander* v. *Alexandria*, 5 Cranch, 1, 7, says:

"If in a subsequent clause of the same act provisions are introduced, which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases."

In *Reiche* v. *Smythe*, 13 Wall. 162, 164, this court said:

"And it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject-matter."

In *United States* v. *Central Pacific R. R. Co.* 118 U. S. 235, 240:

"This court having thus interpreted the act of July 1, 1862, we can not, consistently with the established rules of construction, give a different meaning to substantially the same words in the act of May 7, 1878. * * * If the two acts are to be construed together and as one act, we must give the same meaning to like expressions in both. We can not say in one case that the compensation mentioned means compensation only for services on aided roads, and

in the other that it includes compensation for services on roads not aided."

Still more pointed is the language of the Supreme Court of Kansas, by Mr. Justice Brewer, now of this court, in *County-Seat of Linn County*, 15 Kansas, 501, 527:

"Now when the legislature has used a word in a statute in one sense, and with one meaning, when it subsequently uses the same word in legislation respecting the same subject-matter, it will be understood to have used it in the same sense, unless there be something in the context, or the nature of things, to indicate that it intended a different meaning thereby. The courts may not give it a different meaning to sustain their views of what the law ought to be. They must seek simply to ascertain the legislative intent, and then enforce it."

In *Robbins* v. *Omnibus R. R. Co.* 32 Cal. 472, the Supreme Court of California says:

"The two acts are not only *in pari materia*, but the latter is in effect an amendment of the former; and it is not to be supposed that a word used in a certain sense in the original act was used in a different sense in the subsequent one."

In *Pitte* v. *Shipley*, 46 Cal. 154, the same court says:

"It is a familiar principle of construction that a word repeatedly used in a statute will be presumed to bear the same meaning throughout the statute unless there is something to show that there is another meaning intended."

In *Queen* v. *Poor Law Commission*, 6 Adolphus & Ellis, *Co* 66, Lord Denman says:

"We disclaim altogether the assumption of any right to assign different meanings to the same words in an act of parliament on the ground of a supposed general intention in the act. We find it necessary to give a fair

and reasonable construction to the language used by the legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the act consistent with any views of our own."

Raymond v. *Cleveland*, 42 Ohio State, 529, states the exact rule governing this case:

"Where the meaning of a word or phrase in a statute is doubtful, but the meaning of the same word or phrase is clear where it is used elsewhere in the same act or an act to which the provision containing the doubtful word or phrase has reference, the word or phrase in the obscure clause will be held to mean the same thing as in the instances where the meaning is clear."

Application to the Present Case.

These authorities afford a guide to the construction of the term "grade" in section 11. The grade of rear-admiral, according to section 7, is a single grade. The next higher grade to which the claimant was advanced upon his retirement under section 11 was the grade of rear-admiral. He is entitled to the rank of that grade. He is also entitled to three-fourths of the sea pay of that grade.

What is "three-fourths the sea pay" of "the grade of rear-admiral"? By section 1466 of the Revised Statutes (*ante*, p. 5), rear-admirals rank with major-generals of the Army, "whether on the active or retired list." The claimant, as a rear-admiral on the retired list of the Navy, is therefore of corresponding rank with a major-general on the retired list of the Army.

By section 13 of the Personnel Act, the pay of officers of the line of the Navy is to be the same as that of the officers of corresponding rank in the Army. By section 1261 of the Revised Statutes (*ante*, p. 5), the pay of a major-general in the Army is $7,500 a year.

Three-fourths of this sum, therefore, viz: $5,625, constitutes the correct rate of pay of the claimant as an officer of corresponding rank in the Navy.

The Proviso to Section Seven.

By section 7 it is "*Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army." Hence, it is insisted on behalf of the United States that the claimant is entitled to be paid only as a brigadier-general in the Army.

We have already shown that it would be contrary to all authority on the construction of statutes to treat these nine lower numbers of the grade of rear-admiral as constituting a distinct grade by themselves, when they are treated by section 7 itself as only certain specific numbers within a single grade. It would be equally contrary to well-settled rules as to the contruction of provisos to extend the operation of this proviso beyond "the nine lower numbers of" the grade of rear-admiral therein referred to so as to make it embrace, not merely those nine to whom, by its terms, it is limited, but, in addition, an indefinite number of other rear-admirals.

This proviso immediately follows the enacting clause of the seventh section, which establishes the grades of the active list of the Navy and fixes the number of officers within each grade. It thus constitutes a proviso used in the strict and technical sense and is not, as frequently happens, a proviso used in a loose and inaccurate manner as legislation independent of the enacting clause to which it is attached.

Provisos properly used as such are subject to the rule long ago laid down for their construction by Mr. Justice Story in two noted cases. "The general rule of law," he says in *United States* v. *Dickson* (15 Pet. 141, 165), "which

has always prevailed and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exceptions must establish it as being within the words as well as within the reason thereof." And in *Minis* v. *United States*, 15 Pet. 423, 445, "The office of a proviso, generally, is either to except something from the enacting clause, or to qualify or to restrain its generality or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview."

And in *Ryan* v. *Carter*, 93 U. S. 78, 83, the court reaffirms the rule.

According to the rule laid down by these authorities, those who allege a case to be within the proviso to section 7—that is, who allege that any particular rear-admiral in the Navy shall receive only the pay and allowance of a brigadier-general in the Army—must show such rear-admiral to be embraced "within the words as well as within the reason" of the proviso to section 7. This rear-admiral is certainly not within the words of the proviso, for he is not one of those "embraced in the nine lower numbers of that grade." He can, therefore, not be taken by virtue of anything contained in that proviso, out of the general rule laid down by the statute for the pay of officers of the Navy that they shall "receive the same pay and allowances" as "the officers of corresponding rank in the Army."

The present is a forcible instance for a strict application of the rule as to provisos. The enacting clause of section

7 fixes the numbers of the various grades of officers on the active list of the Navy. The proviso limits the rear-admirals of the nine lower numbers of that grade to a lower rate of pay than that to which they would otherwise be entitled. As if to emphasize the distributive character of the provision and to confine its application to the particular nine officers referred to, the singular number is employed: "That *each* rear-admiral," etc. To take this language as establishing a new and distinct grade, and then to put the officers retired under section 11 into that grade, would extend the language of the proviso far beyond its terms, or beyond its literal or reasonable import.

A number is inelastic. When Congress says "nine," only nine persons can be affected at any one time by the provision. A construction extending this proviso beyond the nine lower numbers in the grade of rear-admiral would make the expression mean "nine, and such additional number as may be retired under section 11 of this act." So forced a construction should need only to be stated to be rejected.

Only One Grade of Rear-Admiral in Practice.

The uniform practice of the Navy Department as evidenced by all official publications treats the rear-admirals as constituting only a single grade.

The Navy Regulations, edition of 1900, contain many references to rear-admirals; but nowhere can be found such expressions as "rear-admiral senior grade" or "rear-admiral junior grade."

Thus, paragraph 24 defines the relative rank between officers of the Navy and those of the Army, and ranks rear-admirals with major-generals. Paragraph 33 defines the command proper to a rear-admiral. The only distinction among these officers is in regard to "such rear-

admirals as are, by law, restricted to the performance of engineering duties"; thus only emphasizing the absence of any distinction based upon difference of pay. By paragraph 77, sub-paragraph 3, the salute to which a rear-admiral is entitled is defined. Paragraph 138 directs how a rear-admiral shall return a salute. Paragraph 186 provides what the funeral escort of a rear-admiral shall be.

So, too, the rear-admirals are contained in a single list in the Navy Register (Edition of July 1, 1903, p. 4). No distinction whatever is made beyond the mere order of names by seniority of commission.

The opinion of this court in *Rodgers* v. *United States*, 185 U. S. 83, throughout treats rear-admirals as a single grade and the nine lower numbers of that grade on the active list as a special exception to the general policy of the law placing rear-admirals on an equality with major-generals in the Army. Nowhere are the nine lower numbers on the active list of rear-admirals treated as a distinct grade. It is even considered a doubtful question (concluding paragraph, pp. 92, 93) whether Congress intended the reduction of their pay to that of brigadier-generals to operate as permanent legislation at all. Much less is there any suggestion of a construction of the language of section 7 which would extend the language of its first proviso, beyond the nine officers therein specified, to an indefinite number of others.

"Grade" Defined by Army Regulations.

Not only are rear-admirals treated by the statutes and the Navy Regulations as constituting a single grade, but other high authorities sustain the same sense of the term as the only admissible one.

The Army Regulations (edition of 1901), Article III, thus define rank and grade:

"Military rank is that character or quality bestowed on military persons which marks their station, and confers eligibility to exercise command or authority in the military service within the limits prescribed by law. It is divided into degrees or grades, which mark the relative positions and powers of the different classes of persons possessing it."

Paragraph nine opens as follows:

"The following are the grades of rank of officers and non-commissioned officers."

"Grade" Defined by Court of Claims.

Under R. S. section 1556, lieutenants in the Navy are entitled to one rate of pay during their first five years as lieutenants and a higher rate after five years. In *Schuetze* v. *United States*, 24 C. Cls. 299, the question was as to the meaning of a grant to a lieutenant in a statute of "the highest rates of pay attached to their respective grades." They were held to mean the highest possible rate of pay after any length of service. The following definition of grade is pertinent (p. 303):

"A grade is a step in a series, a rank; but no lieutenant obtains increased rank simply by length of service. To obtain rank he must be eligible for promotion, must pass an examination, must be nominated by the President to the Senate, must be confirmed by that body, and must receive a commission. None of the incidents of advance in rank occur at the moment when his first five years of service terminate and when his pay increases because of length of service alone."

Also the following (p. 305):

"A grade is a rank, and in our opinion Congress intended to give plaintiff the highest pay of his rank."

Similarly there is no difference in grade between one rear-admiral and another. On the active list there are

two rates of pay, but all are in a single grade, as says the very provision creating the difference of pay. All rank with major-generals in the Army, and all are entitled to major-general's pay, unless deprived thereof by some specific provision for a different rate.

"Grade" Defined by Attorneys-General.

A somewhat similar question was presented to Attorney-General William Wirt in 1822.

By an act "authorizing an augmentation of the Marine Corps and for other purposes," approved April 16, 1814 (3 Stat. L. 124, Section 3), the President was authorized to confer brevet rank on officers of the Marine Corps "who shall have served ten years in any one grade."

Congress by the act of March 3, 1817, entitled "An act to fix the peace establishment of the Marine Corps" (3 Stat. L. 376) provided that that establishment should consist of "one lieutenant-colonel commandant, nine captains," etc.

A captain having served more than ten years in that grade, the question arose what was the next higher grade in which he was entitled to brevet rank. The question was thus answered (1 Opinions Attorneys-General, 578, 582):

"Captain Wainwright is, by the act of 16th April, 1814, entitled to brevet promotion: how can he be promoted *in that corps*, but by giving him the brevet of a lieutenant-colonel? But this, it is said, will be to give him two steps instead of one. Not so: on the present organization of that corps, there is but one step from the post of captain to that of lieutenant-colonel; the former intermediate step of major having been abolished by Congress: it being in the power of Congress to modify the Army at pleasure, they may give it any form they please. They may have, if they choose, only three grades in the Army; making the captain the first grade, the colonel the second, and the general the third. Thus, in

the present instance, they have exercised their power by abolishing the intermediate grade of major, and making the lieutenant-colonelcy the proximate grade to the captaincy. And who shall gainsay them? Suppose the promotion was by commission, instead of brevet: must not the captain step at once from the post of captain to that of lieutenant-colonel?"

According to this view not only was the retirement of the claimant in this case regularly made from the grade of captain into the next higher grade as now existing, that of rear-admiral, but all the incidents to that advancement in rank follow, among which is that stated of the 11th section, "three-fourths the sea pay of the next higher grade." And the pay must be the regular pay of the grade, not that of some excepted class within the grade, the claimant not being a member of that class.

The question what constitutes a grade was again presented to the Attorney-General in 1888 by a request from the Secretary of the Navy for a construction of the act of August 5, 1882, 22 Stat. L. 285, creating among other officers of the active list of the Medical Corps of the Navy "ninety assistant and passed assistant surgeons." The syllabus accurately states the decision (19 Opinions Attorneys-General, p. 169):

"In the organization of the Medical Corps of the Navy a passed assistant surgeon and an assistant surgeon are officers of one and the same *grade*, but belong to different classes in such grade.

"A passed assistant surgeon is simply an assistant surgeon who has been officially notified that he has passed successfully the examination necessary to be undergone before he can be appointed a full surgeon when a vacancy occurs."

In support of this position the following reasoning having much pertinence to the present case was used (pp. 171, 172):

"Indeed, the case of passed assistant surgeons, under the Revised Statutes, was precisely similar to that of passed midshipmen under the old law. That law recognized no such grade as passed midshipman. Midshipman was the *grade*, and passed midshipmen merely a 'class.' Hence, the act of March 3, 1845, section 4 (5 Stat. 794), declares that 'no more than one hundred and eighty passed midshipmen, and those senior in rank, shall at the same time receive the pay fixed by law for that *class* of officers.' But the act of 1806, which was still in force when the act of 1845 took effect (2 Stat. 390), organizing the Navy, declared 'that the officers shall not exceed the following numbers and *grades*; that is to say, thirteen captains, nine masters-commandant, seventy-two lieutenants, and one hundred and fifty midshipmen.' * * *

"It may be added, that passed midshipmen received more pay than midshipmen, just as passed assistant surgeons are entitled to more pay than assistant surgeons.

"It seems very clear, then, that as the law stood at the time the act of August 5, 1882 (supra), was passed, there was no such *grade* in the Navy as that of passed assistant surgeon."

With much more force does this argument apply to the present case and forbid the treatment of the nine lower numbers in the grade of rear-admiral and those above them as constituting two distinct grades when the very section relied upon for that purpose refers to the "grade" of rear-admiral as a single one.

Comparison with Other Sections.

The word "grade" as used in section 11 has the same meaning as when used in section 7—that is, when a captain is retired under section 11, "the next higher grade" into which he goes is the "grade" of rear-admiral as it is styled in section 7. "Three-fourths the sea pay of" that grade refers to the normal pay of the grade—that is, the pay of a major-general in the Army—not an exceptional

rate of pay specifically attached to nine numbers in the grade of rear-admiral, of which nine this claimant is not one.

Not only is this construction required by the plain language of the statute, but a comparison of section 11 with two other sections providing for the retirement of officers demonstrates that Congress legislated with reference to a distinction among different circumstances of retirement. We refer to sections 8 and 9 of the Personnel Act, which are as follows:

"Sec. 8. That officers of the line in the grades of captain, commander, and lieutenant-commander may, by official application to the Secretary of the Navy, have their names placed on a list which shall be known as the list of 'applicants for voluntary retirement,' and when at the end of any fiscal year the average vacancies for the fiscal years subsequent to the passage of this act above the grade of commander have been less than thirteen, above the grade of lieutenant-commander less than twenty, above the grade of lieutenant less than twenty-nine, and above the grade of lieutenant (junior grade) less than forty, the President may, in the order of the rank of the applicants, place a sufficient number on the retired list with the rank and three-fourths the sea pay of the next higher grade, as now existing, including the grade of commodore, to cause the aforesaid vacancies for the fiscal year then being considered.

"Sec. 9. That should it be found at the end of any fiscal year that the retirements pursuant to the provisions of law now in force, the voluntary retirements provided for in this act, and casualties are not sufficient to cause the average vacancies enumerated in section eight of this Act, the Secretary of the Navy shall, on or about the first day of June, convene a board of five rear-admirals, and shall place at its disposal the service and medical records on file in the Navy Department of all the officers in the grades of captain, commander, lieutenant-commander, and lieutenant. The board shall then select, as soon as practicable after the first day of July, a sufficient number of

officers from the before-mentioned grades, as constituted on the thirtieth day of June of that year, to cause the average vacancies enumerated in section 8 of this act. Each member of said board shall swear, or affirm, that he will, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the Naval Service, perform the duties imposed upon him by this act. Its finding, which shall be in writing, signed by all the members, not less than four governing, shall be transmitted to the President, who shall thereupon, by order, make the transfers of such officers to the retired list as are selected by the board:

"*Provided*, That not more than five captains, four commanders, four lieutenant-commanders, and two lieutenants are so retired in any one year. The promotions to fill the vacancies thus created shall date from the thirtieth day of June of the current year:

"*And provided further*, That any officer retired under the provisions of this section shall be retired with the rank and three-fourths the sea pay of the next higher grade, including the grade of commodore, which is retained on the retired list for this purpose." (30 Stat. L. 1005, 1006.)

These sections, in effect, provide that certain retirements, made voluntarily under section 8 or involuntarily under section 9, shall be with the rank and three-fourths the sea pay of the next higher grade. Thus far they resemble section 11. But here the resemblance ends. Section 8 adds, "as now existing, including the grade of commodore." Section 9 varies this language to "including the grade of commodore, which is retained on the retired list for this purpose." Congress, recognizing that it had, for all other purposes, abolished the grade of commodore, expressly retained it for the purpose of those sections only. Commodores rank with brigadier-generals (R. S. section 1466), and consequently captains retired under these sections draw three-fourths of brigadier-general's pay.

In sections 8 and 9 Congress found it necessary, in order to accomplish a certain purpose, to use a direct expression of that purpose. In section 11 the court below holds that the same purpose, in some unexplained manner, was accomplished without the words found necessary in sections 8 and 9.

In view of the use of language retaining the grade of commodore in sections 8 and 9, its omission in section 11 was clearly intentional. The retirement of officers of the Navy, "with a creditable record, who served during the civil war," is to be "with the rank and three-fourths the sea pay of the next higher grade." That is all. For the purposes of section 11, the next higher grade to that of captain is rear-admiral. So it was held by the Attorney-General in an opinion rendered April 8, 1899, immediately after the passage of the act (22 Opinions, 433). So it has been uniformly held by the Navy Department.

There is a reason for this distinction. Officers retired under section 8 are those who voluntarily retire from active service before the age of compulsory retirement. Retirements under section 9 are involuntary and are made by a board of officers whose duty it is to examine the records of all the officers in certain grades, the implied purpose being that the least efficient are to be retired. In neither of the cases provided for in these sections is there merit attached to the officer. Under section 8, he retires for his own convenience or leisure, at an age when his faculties, physical and mental, are normally in full activity. Under section 9, he retires because he is one of the less efficient, and his place is wanted for a younger and more capable officer.

The effect of these sections is thus officially described:

"Section 8 offers a valuable and much-needed officer a premium to go on the retired list at the very time when the number of officers is far short of the number

required by the needs of the service, and when Congress is called upon for more. Section 9, on the other hand, gives a premium to the same end to an officer whose services are no longer of value, and who receives this premium when other officers equally deserving are retired with no such benefit." (Annual Report of Secretary of the Navy, 1901, p. 9.)

Altogether different is the object of section 11. The officers there described do not retire for their own benefit or on account of minor efficiency. They are retired in the regular course of events, at the age of sixty-two years, in pursuance of a long-established policy of the Government, expressed in Revised Statutes, section 1444. At that age, every officer in the superior grades of the Navy, be he healthy or sickly, strong or weak, in mental vigor or of failing mind, is peremptorily retired from active service. A large proportion of the officers who are reaching that age gave their youthful activity and ardor to the service of the Government in the civil war, in the days of its utmost need. Where such officers have failed to attain the highest rank in the Navy at the time of their retirement, it is but fitting that a special distinction and reward be bestowed upon them.

Superior distinction is given by conferring on each upon his retirement a rank of the next higher grade. In so doing Congress did not retain the otherwise extinct grade of commodore, as it did in the case of retirements, voluntary or involuntary, under sections 8 and 9. On the contrary, officers retired under section 11 go from the grade of captain directly up to the next present grade in the navy—that of rear-admiral.

It was insisted by learned counsel for the United States in the court below, however, that here the difference between retirement under sections 8 and 9 on the one hand, and retirement under section 11 on the other stops.

He insisted that the only difference is that claimant has the advantage of being retired as a rear-admiral, with the added influence, dignity, respect, and deference shown to that high office, a distinction that captains retired upon voluntary or involuntary application, under sections 8 and 9 of the Naval Personnel Act do not enjoy.

The language of the law, however, is not satisfied merely by giving the rank of the next higher grade. Its language is, "the rank and three-fourths the sea pay of the next higher grade." A special reward is thus conferred upon the officers retired under section 11 as regards their pay just as clearly as is the special distinction of rank. If they get only brigadier-general's pay they are in no better position than those retired under sections 8 and 9 with the grade of commodore, for that is their rate of pay. What they are entitled to is "three-fourths the sea pay" of the grade of rear-admiral, not three-fourths the sea pay of the grade of commodore.

Thus, not only does the literal language of section 11 require that captains retired under that section shall receive the full retired pay of "the next higher grade" of rear-admiral, but Congress intentionally made a distinction between them and those retired under sections 8 and 9. A captain, retired under section 8 or 9, retires as commodore, with the retired pay of a commodore, corresponding to that of a brigadier-general in the Army. A captain retired under section 11, retires with the rank of rear-admiral, and is entitled to the retired pay of a rear-admiral, corresponding to that of a major-general in the Army.

The Construction a Reasonable One.

The provision of section 11, construed as we have insisted it should be, allows to civil war veterans who have attained the rank of captain on the active list of the

Navy, both the full rank and the full retired pay of a rear-admiral. It is contended on behalf of the United States that this construction is too liberal and that Congress could not have intended it.

In this, however, there is no absurdity. It is a benefit intentionally conferred upon the veterans of the civil war, who also served through the Spanish war, who are now being retired. What are they promoted for if they are not to have an increase of pay?

Civil War Veterans' Legislation.

There is no novelty in the enactment of legislation which singles out veterans of the civil war for special benefits. There is a long line of such legislation granting such benefits, by way of bounties, pensions, extra pay, preference in appointments to the civil service, and permitting service in the civil war to be counted as either single or double time for purposes of longevity pay in the Army or Navy.

Many of these statutes have come before the courts, and it has always been held that they should receive a fairly liberal construction, allowing the officer or soldier the full benefit which Congress designed.

Such, for instance, were the decisions of the Court of Claims in *Hosmer* v. *United States*, 3 C. Cls. 6; *Allstaedt* v. *United States*, 3 C. Cls. 284; *Kelly* v. *United States*, 5 C. Cls. 476; *Henry* v. *United States*, 6 C. Cls. 162; *Cartlidge* v. *United States*, 24 C. Cls. 155; and *Sowle* v. *United States*, 38 C. Cls.

In three of the cases cited the judgments were affirmed by this court: *United States* v. *Hosmer*, 9 Wall. 432 (see conclusion of opinion, p. 435); *United States* v. *Kelly*, 15 Wall. 35; *United States* v. *Henry*, 17 Wall. 405. In none of them was the judgment reversed.

It was, indeed, found necessary to decide adversely to the

claim of a civil war veteran, who asked the courts to review the decision of the head of an executive department as to his continued fitness for office. But the decision to that effect was reached by a bare majority of the Court of Claims, *Keim* v. *United States*, 33 C. Cls. 174, and with a vigorous dissent from one of the judges (pp. 187–190). And this court, though affirming the judgment, said (177 U. S. 290, 295):

"No thoughtful person questions the obligations which the nation is under to those who have done faithful service in its Army or Navy."

In the present case the court is not dealing with a statute under which the rights of the veteran are subject to the discretion of any officer. The statute here involved gives him a legal right to "the rank and three-fourths the sea pay of the next higher grade." Why should he not have the full rate of pay appropriate to the rank which Congress has seen fit to confer upon him?

No better reasons are suggested than —

1. That Congress has in another section of the same act cut down the pay of nine other officers to a sum below that which would otherwise be allowed to officers of their grade; and —

2. That the allowance of this claim would result in giving these officers, when rear-admirals on the retired list, a rate of pay somewhat in excess of that which they drew on the active list when they were only captains.

Such grounds are quite inadequate to sustain the restricted construction contended for by the defense.

The claimant should therefore on this branch of the case have judgment for the difference between three-fourths the sea pay of a brigadier-general, being at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, at which he has been paid since his re-

tirement, and three-fourths the pay of a major-general corresponding to rear-admiral in the Navy, which would amount to five thousand six hundred and twenty-five dollars ($5,625), or a difference of fifteen hundred dollars ($1,500) a year.

2. Commutation of Ration.

Statutes Quoted and Question Stated.

Provision is made for a ration or commutation to officers of the Navy on sea-going vessels by the following sections of the Revised Statutes:

§ 1578. "All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel."

§ 1585. "Thirty cents shall in all cases be deemed the commutation price of the navy ration."

While the claimant was on the active list he was at sea in command of the *Texas*. After July 1, 1899, he failed to receive the sea ration or commutation which had previously been allowed to all officers at sea.

The right to the sea ration or commutation thereof is denied by the court below (rec. p. 9).

The denial is on account of the provision in the Personnel Act (§ 13) that after June 30, 1899, officers of the Navy—

"Shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." (30 Stat. L. 1007.)

The position of the court below is that the grant to officers of the Navy of "the same pay and allowances" as provided for army officers is a denial of any other

allowances by an implied repeal of all other laws granting allowances to naval officers. The statute is read as if there were added at the close of the words quoted the following: "And all acts granting pay or allowances to such officers are repealed"; or as if the words "the same" were followed by the words "and no other" (such as appear in R. S. § 823), so that it would read "the same and no other pay and allowances."

There is in this act no express repeal of prior laws. If other laws are repealed, it is by an implied repeal derived from the grant of the same pay and allowances as provided for army officers.

Our position is that the grant of "the same pay and allowances" operates as a repeal of the old navy pay and allowances only where the possession of the old navy pay and allowances is inconsistent with the receipt of the army pay and allowances. Thus, in granting army pay there is an implied repeal of the navy pay because there is an inconsistency between the receipt of both army pay and navy pay. The grant of army mileage repeals navy mileage. But the sea ration is an allowance which is not inconsistent with army allowances, an allowance for which no substitute is offered by the grant of army allowances, an allowance peculiarly appropriate to naval service for which there can not be an army equivalent. For these reasons, that allowance is not repealed.

Army and Navy Allowances Before 1899.

In both Army and Navy for many years the compensation of officers was made up of pay proper and of a large number of allowances (*Emory* v. *United States*, 19 C. Cls. 254, 112 U. S. 510; *United States* v. *Philbrick*, 152 U. S. 120). Part of these depended on statute and part on executive order. The pay table was a highly complicated affair.

In 1870, by the two acts of July 15, chapter 294, section 24, and 295, sections 3 and 4 (16 Stat. L. 320, 330), the pay of both branches of the service was entirely remodeled. Allowances were in greater part abolished and fixed rates of annual pay, now appearing in R. S. sections 1261 and 1556, took the place of the previous pay proper and allowances.

In relation to the Army it was provided, this now appearing as R. S. section 1269:

"No allowances shall be made to officers in addition to their pay, except as hereinafter provided."

Section 1270 provides for the allowances of "fuel, quarters and forage in kind" and section 1273 for mileage. Forage, by a later act embodied in section 1270, may be commuted where it can not be furnished by the proper departments, but is allowed (section 1272) only for horses authorized by law and actually kept in service.

By a later act, that of June 18, 1878, section 9 (1 Supp. R. S. 190), commutation of quarters is allowed where there are no public quarters. The allowance of fuel is a privilege of buying fuel at a fixed rate much below the market rate (Army Regulations, Arts. 1101, 1110). These are the only allowances to which army officers were entitled on March 3, 1899.

The reorganization of navy pay was even more thorough than of army pay. Officers' pay is provided for by sections 1556 and 1557. Section 1558 declares:

"The pay prescribed in the two preceding sections shall be the full and entire compensation of the several officers therein named, and no additional allowance shall be made in favor of any of said officers on any account whatever, except as hereinafter provided."

The only allowances "hereinafter provided" are the ration when at sea (sections 1578 and 1585) and mileage (section 1566 as amended by act of August 5, 1882, 22 Stat. L. 286). These were the only allowances to naval officers on March 3, 1899.

An army officer receives mileage when he travels, except (Act March 3, 1899, 30 Stat. L. 1068) "to and from our island possessions." When at a post or station he receives quarters or commutation, fuel at a fixed price and, if using a horse, forage or commutation thereof. All army allowances are shore allowances, except mileage when traveling at sea to a foreign country.

A naval officer received his mileage if he traveled on shore. When at sea he received the sea ration. This was given for his actual subsistence because the nature of his duty prevented access to the ordinary source of supply. When stationed ashore he had no allowances whatever. His only allowance, except mileage, was a sea allowance.

Navy Ration and Army Allowances.

The Personnel Act grants commissioned officers of the line of the Navy and of the Medical and Pay Corps the same pay and allowances, except forage, as army officers. Hereby they get the pay of army officers in lieu of navy pay; when traveling, army mileage in lieu of navy mileage; when ashore, army allowances of quarters or commutation and fuel, which they had not before. These the law grants them in express terms; by necessary implication their navy pay and navy mileage for which there is an army equivalent are taken away. The benefit to them in the way of allowances is entirely when on shore.

There would be no inconsistency between the retention of the navy sea ration and the grant of army allowances for shore duty made by the act.

The respective allowances may be thus tabulated:

Naval Officer. *Old Law.*		Army Officer.	Naval Officer. *New Law.*	
At sea:	*Ashore:*	*On all duty:*	*At sea:*	*Ashore:*
Ration	Mileage	Mileage	Ration	Mileage
		Quarters		Quarters
		Fuel		Fuel
		Forage (if he has a horse)		

This illustrates how entirely consistent with the grant of army allowances is the retention of the navy sea ration. Nor would it create any inequality, since the army officer has no sea duty. We may therefore summarize the result of this examination:

(1) That the army allowances newly given to the Navy are allowances for shore duty.

(2) That there is no equivalent in army allowances for the navy sea ration.

(3) That there is no inconsistency in receiving army allowances while on shore and the navy sea ration while at sea.

Presumption Against Implied Repeal.

We now reach the question whether under the rules of construction of statutes recognized by the courts, the grant of "the same pay and allowances" as is received by the Army is to be considered as taking away the navy sea ration under such conditions as we have shown to exist. It is a question of repeal by implication, and upon this subject there have been numerous judicial decisions by this court.

In *Harford* v. *United States* (8 Cranch, 109), the following is said:

"The act of 1806 does not profess to repeal the fiftieth section of the collection act as to the prohibited goods,

and a repeal, by implication, ought not to be presumed, unless from the repugnance of the provisions the inference be necessary and unavoidable. No such manifest repugnance appears to the court. The provisions may well stand together, and indeed serve as mutual aids."

In *McCool* v. *Smith* (1 Black, 470):

"A repeal by implication is not favored. The leaning of the courts is against the doctrine, if it be possible to reconcile the two acts of the legislature together. * * * It is possible to reconcile the two acts."

In *Ex parte* Yeager (8 Wall. 105):

"Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy; and never, we think, when the former act can stand together with the new act."

In the case of the *Distilled Spirits* (11 Wall. 365):

"Statutes *in pari materia*, like the acts of 1864 and 1866, are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together."

In *Henderson's Tobacco* (11 Wall. 657), the subject is fully reviewed and summarized in the following statement:

"Statutes are, indeed, sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter acts are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing, manifests a clear intent to abolish the old law. In the *United States* v. *Tynen*, 11 Wall. 92, it was said by Mr. Justice Field, that 'when there are two acts upon the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to

the extent of the repugnancy as a repeal of the first; and even where two acts are not, in express terms, repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act.' For this several authorities were cited, some of which have been cited on the present argument. This is undoubtedly a sound exposition of the law. But it must be observed that the doctrine asserts no more than that the former statute is impliedly repealed, so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it. Where the powers or directions under several acts are such as may well subsist together, an implication of repeal can not be allowed."

In *Red Rock* v. *Henry* (106 U. S. 601):

"The leaning of the courts is against repeals by implication and if it be possible to reconcile two statutes, one will not be held to repeal the other."

In *Frost* v. *Wenie* (157 U. S. 46, 58):

"It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute."

The rule is thus laid down that if two statutes are not absolutely irreconcilable, one will not be held to repeal the other. The older act says that a naval officer shall have a ration when at sea or attached to a sea-going ves-

sel; the later act says that he shall receive the same pay and allowances as an army officer. Can these two acts possibly be reconciled? They can be, by giving him the same pay and allowances as an army officer, but by retaining for him the navy sea ration for which there is no army equivalent.

Generalia Specialibus Non Derogant.

There is an application of this general principle found in another and more specific rule. The rule is stated by Black on Interpretation of Laws, p. 116, as follows:

"As a corrollary from the doctrine that implied repeals are not favored, it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms, and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. This rule is founded upon, or expressed by, the maxim *Generalia specialibus non derogant.*"

It is similarly stated by Sedgwick (2d Ed. Pomeroy's notes), p. 97, and the following adequate reason given for the rule, p. 98:

"The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."

Dwarris had stated the same rule, perhaps not quite so clearly as the later writers. See Potter's Dwarris, p. 273, as follows:

"The meaning of which is, that when the law descends to particulars, such more special provisions must be understood as exceptions to any general rules laid down to the contrary; and the general rules must not (*vice versa*) be alleged in confutation of the special provisions."

This rule was applied by this court in *United States* v. *Greathouse* (166 U. S. 501). Revised Statutes, section 1069, bars all claims not presented within six years after the claim first accrues, but a proviso saves the claims of various persons under disability. The act of March 3, 1887, section 1 (24 Stat. L. 505), provides that no suit against the United States should be allowed, unless brought within six years after the right accrued and expresses no exception. Strong ground existed for asserting that the whole subject was covered by the act of 1887, and that its omission of any saving clause was a significant repeal of the entire previous act on the same subject containing the saving clause. But this court said (p. 605):

"Those exceptions were not expressly abrogated by the act of 1887, and they could be held to be repealed only by implication, but repeals by implication are not favored, and when two statutes cover in whole or in part the same matter, and are not absolutely irreconcilable, effect should be given, if possible, to both of them. *Frost* v. *Wenie*, 157 U. S. 46, 58: *United States* v. *Healey*, 160 U. S. 136, 147."

That case is closely analogous to the present. It was open to the court to say there that the new law was intended as a system substituted for the old; that the passage of the new act of limitation without exceptions definitely showed a purpose that the exceptions should no longer be in force. These positions, strange as they were, had to yield to the rule against implied repeals, as there forcibly stated.

Of the cases here cited, we have already quoted from

one, and now call attention to the second,—*United States* v. *Healey* (160 U. S. 136). Revised Statutes, section 2357, had fixed $1.25 an acre as the price of public lands, when offered for sale with a proviso increasing this to $2.50 for alternate reserved lands along land-grant railroads. The act of March 3, 1877 (19 Stat. L. 377), provided for the reclamation and sale of desert lands at $1.25 an acre, making no exception of alternate reserved lands. This court held that the general terms of the act of 1877, fixing $1.25 an acre, did not repeal the special provision of Revised Statutes, section 2357, fixing a higher price for alternate reserved lands, declaring (p. 146):

"It is as if the act of 1877, in terms, excepted from its operation such lands as are described in the proviso of § 2357 of the Revised Statutes. Thus construed, both statutes can be given the fullest effect which the words of each necessarily require."

Rodgers v. *United States*, 185 U. S. 83, which has been fully referred to as an authority on the first branch of this case, constitutes an application of the rule of *Generalia specialibus non derogant*.

These cases establish the rule that a general law does not imply a repeal of special laws on the same subject. The grant of the navy sea ration was a special grant. The grant of section 13 of the Personnel Act is a general grant. The latter does not repeal the former.

No Violation of the Principle of Equality.

It may perhaps be suggested that to give to navy officers this allowance which army officers have not, is to violate the principle of equality which, within certain limits, is embodied in section 13 of the Personnel Act. The principle of equality is not violated for this reason: The normal duty of army officers is ashore; they have fuel

and quarters besides pay, and these the navy shares; but the army officer, with exceptions of so little general weight as to be of no importance in determining the rule, has no duty at sea. The naval officer's normal duty is at sea; if he receives a ration while on this duty, it can not be said that he receives an advantage over the army officer who has no such duty. If army officers regularly had sea duty, it might be a cause of complaint if naval officers had a sea ration and army officers had none.

Reduction of Navy Pay Forbidden.

But the principle of equality between army and navy officers under the Personnel Act and its amendments is qualified by many exceptions expressed in the act. The most important is the preservation of the old navy pay when higher than the army pay.

One of the provisos of section 13 of the Personnel Act is the following:

"That no provision of this Act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

The naval appropriation act of the next year, June 7, 1900 (31 Stat. L. 697), contains the following amplification of this proviso:

"Section thirteen of the Act approved March 3, 1899, entitled 'An Act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States,' is hereby so amended as to provide that nothing therein contained shall operate to reduce the pay which, but for the passage of said act, would have been received by any commissioned officer at the time of its passage or thereafter."

In the light of these provisions, it must be said that the general legislative principle is that, when at sea, the naval officer is never to have less pay than he had before the Personnel Act, but may have more.

This appellant, then a captain in the Navy, was entitled to $4,500 annual pay at sea (Rev. Stat., section 1556) under the old navy law. By the Personnel Act he became entitled to army pay at the same rate (Rev. Stat. sections 1261, 1262, 1267). If he lost his navy ration, the net result of the Personnel Act to him when at sea was a loss of $109.50 a year. In all cases where the old navy pay was equal to or greater than the army pay, if the navy ration is repealed, the Personnel Act would reduce the total compensation of an officer at sea $109.50.

The grant of the Personnel Act and its amendment was of an increase in pay where the pay was below the army pay, but a reduction where it was above the army pay was solicitously avoided. It is true that the sea ration is an allowance and not pay, but when all this care was taken to preserve the full pay, is it probable that Congress intended that the total compensation of an officer at sea should as the result of the Personnel Act be reduced to the extent of $109.50 a year?

Sea Service More Meritorious.

Sea service, whether under section 1556, or the act of March 3, 1899, is rated as more meritorious than shore duty by the grant of a higher rate of pay (*Rodgers* v. *United States*, 185 U. S. 83, 92). The Personnel Act has granted to officers of the Navy shore allowances which they never had before. This results in officers on shore receiving more, and never less, than they did before the passage of the act. If the court below is right officers are now to receive less at sea by losing the sea ration.

Thus the net result of the Personnel Act would be to grant higher compensation in all cases to officers for their duty ashore, but in many cases to give them less for sea service. Certainly no one would ascribe to Congress an intelligent purpose to do this, and it should not be held that this result has been accomplished unless the terms of the act make it necessary. We have seen that, under the recognized rules of interpretation, no such conclusion need be reached.

Conclusion.

We are standing upon settled principles of statutory construction in insisting that the grant made by the act of March 3, 1899, is not a repeal of grants made by previous acts not necessarily inconsistent.

The judgment should be reversed and the cause remanded to the court below with directions to award to the appellant the full retired pay of a rear-admiral corresponding to that of a major-general in the Army and commutation of ration when at sea during the time of his active service.

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